

FILED

JUN 28 2004

Freeborn & Peters LLP

June 25, 2004

SURFACE
TRANSPORTATION BOARD

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

211454



**Re: Surface Transportation Board Docket No. AB-6 (Sub-No. 401X);
The Burlington Northern and Santa Fe Railway Company Abandonment
of Des Moines, Iowa**

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6596
bnettl@freebornpeters.com

Chicago

Springfield

Dear Secretary Williams:

Enclosed for filing in the referenced docket are the original and ten copies of The Burlington Northern and Santa Fe Railway Company's Notice of Exemption, and a check for \$2,800.00, covering the filing fee.

Please acknowledge receipt of this material by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

The environmental and historic reports have been forwarded to the responsible agencies and copies have been directed to the Section of Environmental Analysis. The Notice of Exemption includes a certificate of notice upon various interested state and federal authorities (the U. S. Department of the Interior – National Park Service, Recreation and Conservation Assistance Program; the U. S. Department of the Interior – National Park Service, Land Resource Division; the Department of Defense, Military Traffic Management Command; the Iowa Utilities Board; the Iowa Department of Transportation; and the Chief of Forest Service, U. S. Department of Agriculture). As of this date, I have not received the affidavit of publication from the Des Moines Register. I will forward the affidavit when I receive it.

Sincerely,

Brian Nettles

/bn
Enclosures

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BEFORE THE

211454

SURFACE TRANSPORTATION BOARD

Abandonment of a line of Railroad
Between BNSF M.P. 67.38 and
M.P. 1.45 near Des Moines in
Polk County, Iowa

NOTICE OF EXEMPTION
Docket No. AB-6
(Sub-No. 401X)



TO THE SURFACE TRANSPORTATION BOARD:

The Burlington Northern and Santa Fe Railway Company (BNSF) hereby notifies the Board that it intends to abandon its line of railroad between M.P. 67.38 and M.P. 1.45 near Des Moines, in Polk County, Iowa, a total distance of 1.88 miles, pursuant to the Board's Exemption of Out of Service Rail Lines, 49 C.F.R. § 1152.50 and in support of the Notice, respectfully provides the following information:

- I. Proposed consummation date for the abandonment.

August 18, 2004

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Public Record

- II. Certification required in 49 C.F.R. § 1152.50(b)

The attached Certification of Michael Smith certifies that no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line is pending with the Board or any U.S. District Court or has been decided in favor of a complainant within the last two years. The attached Verification of Richard A. Batie certifies that no local traffic has moved over this line for at least two (2) years and any overhead traffic on the line can be rerouted over other lines.

- III. Information required by C.F.R. § 1152.22(a)(1-4), (7), (8) and (e)(4).

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SURFACE
TRANSPORTATION BOARD

(a) General

- (1) Exact name of Applicant.

The Burlington Northern and Santa Fe Railway
Company

- (2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

Applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105.

- (3) Relief sought.

BNSF seeks an exemption from Surface Transportation Board approval authorizing the abandonment and discontinuance of service of the Des Moines, Iowa line specified above.

- (4) Detailed map of the subject line.

See Exhibit A.

- (5) Name, title and address of representative of applicant to whom correspondence should be sent.

Michael Smith
Freeborn & Peters
311 S. Wacker Dr., Suite 3000
Chicago, IL 60606-6677

- (6) List of all United State Postal Service ZIP Codes that the line traverses.

The Des Moines, Iowa line traverses United States Postal Service Zip code 50309.

- (7) Statement of whether the properties proposed to be abandoned are suitable for other public purposes, including roads or highways, other forms of mass transportation, conservation, energy production or transmission or recreation. If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed.

The right of way may be suitable for use for other public purposes such as a trail. On part of the properties involved, title considerations may affect the conveyance of the land for use other than railroad purposes. Based on information in our possession, the line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

IV. Level of protection.

The interest of railroad employees will be protected by the conditions imposed in Oregon Short Line RR Co. - Abandonment - Goshen, 360 I.C.C. 91 (1979).

- V. Certification that the notice requirements of §§ 1152.50(d)(1) and 1105.11 have been met attached.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Smith", written over a horizontal line.

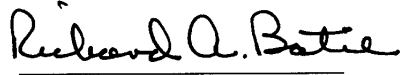
Michael Smith
Freeborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Dated: June 25, 2004

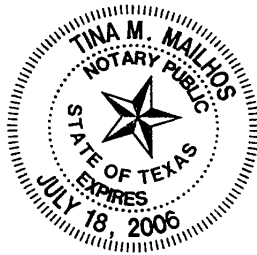
VERIFICATION

STATE OF TEXAS)
)ss
COUNTY OF TARRANT)

Richard A. Batie makes oath and says he is Manager, Shortline Development in the Network Development department of The Burlington Northern and Santa Fe Railway Company; that he has been authorized by the Applicant to verify and file with the Surface Transportation Board the foregoing Notice of Exemption in AB-6 (Sub-No. 401X); that he affirms that the line has had no local traffic in the prior two (2) years and that there is no overhead traffic to be rerouted; that he has carefully examined all of the statements in the Notice; that he has knowledge of the facts and matters relied upon in the Notice; and that all representations set forth therein are true and correct to the best of his knowledge, information, and belief.


Richard A. Batie
Manager, Shortline Development

Subscribed and sworn to before me the 10 day of June, 2004.




Notary Public

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
NO. AB-6 (Sub No. 401X)

CERTIFICATION

I hereby certify that (1) no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line is pending with the Board or any U.S. District Court or has been decided in favor of a complainant within the last two (2) years; (2) service of notice upon the U.S. Department of the Interior, National Park Service, Recreation Park Service, Land Resource Division; the Department of Defense, Military Traffic Management Command; the Iowa Utilities Board; the Iowa Department of Transportation; and the Chief Forest Service, U.S. Department of Agriculture was accomplished by mailing a copy thereof on June 4, 2004; (3) the environmental and historic reports were served upon the agencies identified in 49 C.F.R. § 1105.7(b) and the State Historic Preservation Offices on June 4, 2004; (4) service of notice upon the State Clearinghouses was accomplished by mailing a copy thereof on June 4, 2004; and (5) the publication requirements of 49 C.F.R. § 1105.12 have been complied with, to wit: publication of notice was accomplished on June 22, 2004 in the Des Moines Register, affidavit of publication is attached.



Michael Smith
Freeborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Dated: June 25, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

In the Matter of The
Burlington Northern and Santa Fe
Railway Company
Notice of Exemption to Abandon
Its Line of Railroad Between M.P.
67.38 and M.P. 1.45 near Des Moines,
in Polk County, Iowa

Docket No. AB-6
(Sub No. 401X)

ENVIRONMENTAL REPORT

The following information is submitted to the Surface Transportation Board ("Board") by The Burlington Northern and Santa Fe Railway Company (BNSF) in accordance with the Board's reporting requirements as set forth in 49 C.F.R. § 1105.7 for the purpose of assisting the Board's preparation of an environmental document regarding BNSF's Notice of Exemption to abandon of its line of railroad between M.P. 67.38 and M.P. 1.45 near Des Moines, in Polk County, Iowa, a total distance of 1.88 miles.¹

(1) Proposed action and Alternatives: Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

BNSF is requesting authority to abandon and discontinue service of the line. A map of the line is attached as Exhibit A.

(2) Transportation system: Describe the effect of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

¹ There is an engineering equation such that Milepost 68.20 = Milepost 0.39.

The proposed abandonment will have no affect on existing transportation systems or patterns as the line is out of service.

(3) Land Use:

(i) Based on consultation with local and/or regional planning agencies and/or review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

The proposed abandonment should be consistent with local land use plans. The City of Des Moines supports BNSF's plans to file an exemption to abandon its rail line between Milepost 67.38 and Milepost 1.45. See Exhibit B, letter from the City of Des Moines.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agriculture land.

Prime farmlands are not present in the vicinity of the proposed abandonment. See Exhibit C, letter from the Iowa Department of Agriculture.

(iii) If any action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9

N/A

(iv) If the proposed action is abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10906 and explain why.

The rail line proposed for abandonment is located in an urban renewal area that is proposed to be redeveloped with commercial and residential uses. The City advises that it hopes to acquire the remaining

rail line after the abandonment is approved by the STB. See Exhibit B,
letter from the City of Des Moines.

(4) Energy:

(i) Describe the effect of the proposed action on transportation of energy.

To the best of BNSF's knowledge there are no undeveloped energy
resources such as oil, natural gas or coal in the vicinity of this line.

(ii) Describe the effect of the proposed action on recyclable commodities.

This abandonment and discontinuance will not adversely affect
movement or recovery of recyclable commodities as the line is out of
service.

(iii) State whether the proposed action will result in an increase or
decrease in overall energy efficiency and explain why.

This abandonment will not result in an increase or decrease in overall
energy efficiency as the line is out of service.

(iv) If the proposed action will cause diversions from rail to motor carriage
of more than:

(A) 1,000 rail carloads a year, or

(B) An average of 50 rail carloads per mile per year for any part of
the affected line, quantify the resulting net change in the energy
consumption and show the data and methodology used to arrive at the
figure given.

There will be no diversions of traffic because the line is out
of service.

(5) Air:

(i) If the proposed action will result in either:

(A). An increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of the line effected by the proposed, or

No.

(B). An increase in rail yard activity of at least 100% (measured by carload activity), or

No.

(C). An average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions.

The action will not involve an increase in truck traffic of more than 10% or 50 vehicles per day on any affected road segment as the line is out of service.

(ii) If the proposed action affects a Class I or nonattainment area under the Clean Air Act, and will result in either:

(A) An increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three train a day on any segment of rail line, or

(B) An increase in rail yard activity of at least 20% (measured by carload activity), or

(C) An average increase in truck traffic or more than 10-% of the average daily traffic of 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by State implementation Plan. However, for a rail construction under 49 U.S.C. § 10901 (or 49 U.S.C. § 10505) or in a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

The proposed abandonment will not result in an increase of rail or truck traffic because the line is out of service.

(iii) If the transportation of ozone depleting materials (such as nitrogen oxide and from) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

This action will have no effect on transportation of ozone-depleting materials as the line is out of service.

(6) Noise: If any of the thresholds identified in item (5)(c) of this section are surpassed, state whether the proposed action will cause:

(i) An incremental increase in noise levels of three decibels Ldn or more,

N/A

(ii) An increase to a noise level of 76 decibels Ldn or greater. If so, identify sensitive receptors (e.g. schools, libraries, hospitals, residences, retirement communities and nursing homes) in the project area and quantify the noise increase for those receptors if the thresholds are surpassed.

N/A

(7) Safety:

(i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad crossings).

This abandonment should have no adverse effect on health or public safety. There are 5 public crossings and 4 private crossings. During salvage operations on the line, precautions will be taken to ensure public safety, and contractors will be required to satisfy all applicable health and safety laws and regulations.

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the

extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills, and the likelihood of and accidental release of hazardous materials.

Abandonment will not result in transportation of hazardous materials.

(iii) If there are any known hazardous waste site or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

To the best of BNSF's knowledge, there are no known hazardous waste sites or sites identified on the line segment and no unintentional releases of hazardous materials have occurred on this line. Information on file dates back to 1975.

(8) Biological resources:

(i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

The U.S. Fish and Wildlife Service has reviewed the proposed action and has indicated it has "No Objection" to this abandonment. See Exhibit D, response from the U.S. Fish and Wildlife Service. The State of Iowa Department of Natural Resources has searched the records of the project area and found no records of rare species or significant natural communities. The Department of Natural Resources does not think the project will affect protected species or rare natural communities. See Exhibits E, letter from the State of Iowa Department of Natural Resources.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

There are no known National Forests or National Park Services located in the area of the proposed abandonment. See Exhibit F, letter from the U.S. Department of the Interior, Bureau of Land Management. The abandonment will not affect any significant natural communities. See Exhibit E, letter from the Iowa Department of Natural Resources.

(9) Water:

(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

This operation is not inconsistent with any local, state or federal water quality standards. See Exhibit G, letter from Iowa Department of Natural Resources, dated May 31, 2001, as supplemented by letter dated May 19, 2003.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under Section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year floodplains will be affected. Describe the effects.

Permits under Section 404 of the Clean Water Act are not required. See Exhibit H, letter from the U.S. Army Corps of Engineers, Rock Island District.² The area of the proposed abandonment is protected by a levee system from the 100-year flood. Since no railway bridge exists today in that area over the Des Moines River, the proposed abandonment will not affect the 100-year floodplain. See Exhibit I, letter from the City of Des

² Although the response set forth in Exhibit H is dated June 14, 2000, no material modifications to the right of way have occurred since issuance of the Corp's letter identified as Exhibit H. As of the date of filing of this report, BNSF will provide a copy of this Environmental Report and the Corp's response attached as Exhibit H to determine whether the information requires supplementation. BNSF will provide the STB's Section of Environmental a copy of any reply or supplemental information it receives.

Moines Engineering Department (Exhibit I contains an oversized map. Copies of the map can be obtained upon a request). The Raccoon River bridge is a flood hazard. Removal of this bridge will greatly improve flood control for the area and will allow the City to remove the levee opening north of the Raccoon River. See Exhibit B, letter from the City of Des Moines.

(iii) State whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.

Permits under Section 402 of the Clean Water Act are not required. Section 402 water quality certifications would only be needed if the Corps determined an individual Section 404 permit is needed. See Exhibit G, Letter from the Iowa Department of Natural Resources. In this case, a Section 404 permit is not required. See Exhibit H, letter from the Army Corps of Engineers.

(10) Proposed Mitigation: Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

Any salvage operations that may result will be in accordance with BNSF's general practice of requiring its private contractors to comply with all federal, state and local laws and regulations pertaining to the environment, including, but not limited to noise, air quality, water quality, and items of archaeological significance. The project itself should mitigate the environmental effects of reinstating active rail operations.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Michael Smith', written over a horizontal line.

Michael Smith
Freeborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Dated: June 25, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

In the Matter of The
Burlington Northern and Santa Fe
Railway Company
Notice of Exemption to Abandon
Its Line of Railroad Between M.P.
67.38 and M.P. 1.45 near Des Moines,
in Polk County, Iowa

Docket No. AB-6
(Sub No. 401X)

HISTORICAL REPORT

The following is submitted to the Surface Transportation Board by The Burlington Northern and Santa Fe Railway Company (BNSF) in accordance with the Board's reporting requirements set forth in 49 C.F.R. § 1105.8 for the purpose of assisting the Board's environmental and historical assessment regarding BNSF's Notice of Exemption to abandon its line of railroad between M.P. 67.38 and M.P. 1.45 near Des Moines, in Polk County, Iowa, a total distance of 1.88 miles.¹

(1) A U.S.G.S. topographic map (or alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of the railroad structures that are 50 years old or older and are part of the proposed action;

One copy of a U.S.G.S. Topographical map has been provided to the State Historical Society of Iowa and one copy is being provided to the Surface Transportation Board's Section of the Environmental Analysis upon filing of this Report.

(2) A written description of the right-of-way (including approximate widths, to the extent known) and the topography and urban and/or rural characteristics of the surrounding area:

¹ There is an engineering equation such that Milepost 68.20 = Milepost 0.39.

The 1.88 mile Des Moines Trackage (Milepost 67.38 to Milepost 1.45) lies within the City of Des Moines, a major city in the state of Iowa. The trackage is located within Polk County, Iowa. The adjoining land is urban in nature. Part of the rail line corridor was formerly located within the 66 foot wide Elm Street prior to its reconstruction into the Martin Luther King Expressway, facilitating traffic flows in the area. The balance of the line serves an area of southwestern Des Moines that will be developed into mixed land uses. The City plans to remove the Raccoon River bridge to improve flood control and to foster development of the area. The Des Moines population was approximately 198,682 in 2000. The right of way varies from 50 feet to 100 feet in width.

(3) Good quality photographs (actual photographic prints, not photocopies) or railroad structures on the property that are 50 years old or older and of the immediately surrounding area;

The bridge over the Des Moines River was removed many years ago. The bridge over the Raccoon River was built in 1910 with the timber approaches rebuilt in 1928 and 1943. The City of Des Moines plans to remove the Raccoon River bridge for flood control purposes.

(4) The date(s) of construction of the structures, and the date(s) and extent of any major alterations, to the extent such information is known;

N/A

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action:

The Des Moines and Kansas City Railway Company acquired part of the right of way between 1883 and 1896. The balance of the right of way in Elm Street was acquired by the former Chicago Burlington and Quincy Railroad Company (CBQ) in 1900 by City

ordinance. The Des Moines and Kansas City Railway Company was a predecessor of the former CBQ. In 1970 the CBQ and other railroads merged to form the Burlington Northern Railroad Company (BN). In 1995 BN and The Atchison Topeka and Santa Fe Railway merged to become The Burlington Northern and Santa Fe Railway Company (BNSF).

The Des Moines, Iowa trackage has been out of service for over two years. The bridge over the Raccoon River was damaged in the early 1990's and has remained out of service since that time.

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is to be historic;

Documents in BNSF's possession concerning this abandonment may include alignment maps showing the right-of-way and/or station maps. Such documents are too large for practical reproduction in this report, but can be furnished upon request, if they are available.

(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. § 60.4), and whether there is a likelihood of archaeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);

To the best of BNSF's knowledge, the proposed abandonment should have no appreciable effects on any known sites or properties listed, or eligible for listing in the National Register of Historic Places. BNSF is not aware of any unique sites or structures with significant historical associations. The State Historical Society of Iowa requests information regarding the Area of Potential Effect (APE), what types of cultural

resources are or may be located in the APE, the significance of the historic properties in the APE and a determination from the responsible federal agency of the undertaking's effects on historical properties within the APE. See Exhibit J, letter from the State Historical Society of Iowa. Subject to issuance of STB notice requested in Exhibit J, BNSF proposes to consult further with the state agency to provide sufficient information for it to provide an opinion as to whether historical resources would be affected. Any supplemental information obtained on this matter from the state agency will be made available to the STB's Section of Environmental Analysis.

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archaeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.

BNSF is not aware of any known prior subsurface ground disturbance or fill or any other environmental conditions (naturally occurring or man-made) that might affect the recovery of archaeological resources.

Respectfully submitted,



Michael Smith
Freeborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Dated: June 25, 2004

CERTIFICATION PURSUANT TO 49 C.F.R.1105.7(c)

The Burlington Northern and Santa Fe Railway Company ("BNSF") by and through its authorized representative, Michael Smith, certifies that on June 4, 2004, BNSF sent copies of the foregoing Environmental and Historical Reports by first class mail to the following agencies:

Ms. Victoria Rutson
Chief, SEA
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Douglas Jones
Archeologist
State Historical Society of Iowa
600 East Locust Street
Des Moines, IA 50319-0290

Jeff Nolder
Staff Geologist
Milwaukee Field Office
Bureau of Land Management
310 West Wisconsin Avenue, Suite 450
Milwaukee, WI 53203

Keith Dohrmann
Iowa Department of Natural Resources
Parks, Recreation and Preserves Division
Wallace State Office Building
502 East 9th
Des Moines, IA 50319

Kevin Szcodronski
Assistant Administrator
Conservation and Recreation Division
Iowa Department of Natural Resources
Wallace State Office Building
502 East 9th
Des Moines, IA 50319

Jack Riessen
Chief of Water Quality Bureau
Iowa Department of Natural Resources
Wallace State Office Building
502 East 9th
Des Moines, Iowa 50319

William Ehm
Director
Division of Soil Conservation
Iowa Department of Agriculture Land
Stewardship
502 East 9th
Wallace State Office Building
Des Moines, Iowa 50319

Polk County Board of Supervisors
111 Court Ave., Room #300
Des Moines, IA 503309

Jeb Brewer
City Engineer
City Hall
400 East First Street
Des Moines, IA 50309

Eric Anderson
City Manager
City Hall
400 East First Street
Des Moines, IA 50309-1891

Leroy Brown
State Conservationist
Natural Resources Conservation Service
210 Walnut Street
693 Federal Building
Des Moines, IA 50309

Richard Nelson
Supervisor
U.S. Fish and Wildlife Service
4469 48th Avenue Court
Rock Island, IL 61201

U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, KS 66101

Iowa Department of Transportation
800 Lincoln Way
Ames, Iowa 50010

Richard Snay
National Geodetic Survey
NOAA - SSMC3
1315 East-West Highway
Silver Spring, MD 20910

Michael Hayes
Project Manager
Regulatory Branch
U.S. Army Corps of Engineers
P.O. Box 2004
Rock Island, IL 61204

United States Fish and Wildlife Service
Region 3
1 Federal Drive
BHW Federal Building
Fort Snelling, MN 55111

Regional Director
National Park Service
Midwest Region
1709 Jackson St.
Omaha, NE 68102

Iowa Utilities Board
Department of Commerce
Utilities Division
350 Maple Street
Des Moines, IA 50319-0069

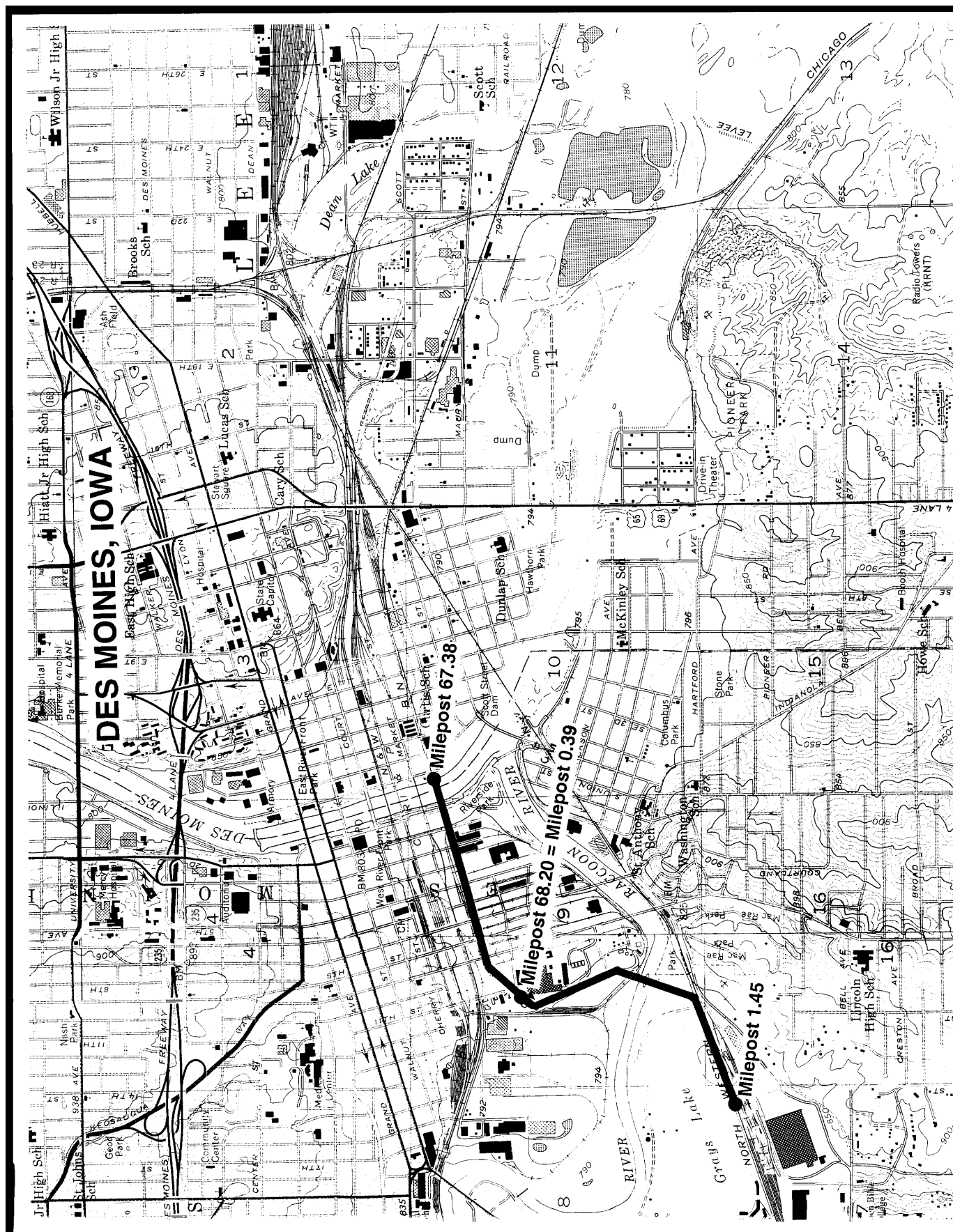
The required cover letters (pursuant to 49 C.F.R. 1105.11) are attached hereto. BNSF has consulted with all appropriate agencies in preparing the reports.



Michael Smith
Freeborn & Peters
311 S. Wacker Dr. Suite 3000
Chicago, Illinois 60606-6677
Phone: (312) 360-6724
Fax: (312) 360-6598

Dated: June 25, 2004

A



B



OFFICE OF THE CITY MANAGER
CITY HALL
400 EAST FIRST STREET
DES MOINES, IOWA 50309 1891
(515) 283-4141

ALL-AMERICA CITY 1949, 1976, 1981

June 16, 2003

Mr. Brian Nettles
Freeborn & Peters Law Firm
311 South Wacker Drive
Suite 3000
Chicago, IL 60606-6677

Re: The Burlington Northern and Santa Fe (BNSF) Railway
Company Abandonment in Des Moines, Iowa
City Activity ID 18-2002-000

Dear Mr. Nettles:

The City of Des Moines is providing comments on your May 9, 2003 letters addressed to Jeb E. Brewer, City Engineer, City of Des Moines, and to Gene Phillips, Polk County Board of Supervisors. The City supports BNSF's plans to file an exemption to abandon its rail line between Milepost 67.38 and Milepost 1.45 in Des Moines, Iowa.

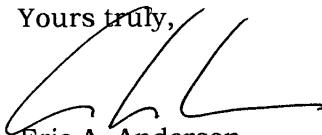
Enclosed is a copy of the portion of the City of Des Moines FIRM that shows flood hazard zones in the vicinity of the project. The expansion of the abandonment to milepost 1.45 includes the railroad bridge across the Raccoon River, which is located in the 100-year floodplain. The bridge is a flood hazard, is currently out of service and is unusable for rail purposes in its current condition. We are working with Rich Batey (817) 352-6432 at the BNSF Abandonment Department to acquire the bridge and allow us to remove the tracks, bridge structure and embankment fill from the levee opening at the north side of the Raccoon River to the south side of the Raccoon River. Removal of the bridge will greatly improve the flood control for the area and will allow the City to remove the levee opening north of the Raccoon River. The BNSF and the City plan to reach an agreement within the next 30 days which would allow the City to perform the above work prior to the abandonment approval by the Federal Surface Transportation Board (STB).

Mr. Brian Nettles
June 16, 2003
Page 2

The rail line proposed for abandonment is located in an urban renewal area that is proposed to be redeveloped with commercial and residential uses. Rail service will not be needed. The City hopes to acquire the remaining rail line after the abandonment is approved by the STB. We have no plans to convert the rail line for trail purposes. Grays Lake Park, located in the vicinity of the rail line, is not impacted by its abandonment.

Thank you for the opportunity to provide comments. If we can be of further assistance in this matter, please contact Jeb E. Brewer, P.E., City Engineer at (515) 283-4791.

Yours truly,

A handwritten signature in dark ink, appearing to read 'Eric A. Anderson', is written over the words 'Yours truly,'.

Eric A. Anderson
City Manager

Enclosure

cc: Richard Clark, Deputy City Manager
Jeb E. Brewer, P.E., City Engineer
William Stowe, Public Works Director
Don Tripp, Park & Recreation Director
Phil Wageman, Real Estate Manager
Terry Timmins, Deputy City Attorney
Polk County Board of Supervisors

C



IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

PATTY JUDGE
SECRETARY OF AGRICULTURE

May 15, 2003

Brian Nettles
Freeborn & Peters
311 South Wacker Drive, Suite 3000
Chicago, IL 60606-6677

Dear Mr. Nettles:

I have received your letter of May 12, 2003, regarding BNSF plans to abandon railroad line in Des Moines, Iowa.

The area you reference for abandonment is located within the city limits of Des Moines. There is no prime agricultural land in that area.

Sincerely,

A handwritten signature in black ink, which appears to read "William A. Ehm".

William A. Ehm, Director
Division of Soil Conservation

WAE:ejj

D

Freeborn & Peters

May 12, 2003

VIA U.S. MAIL

Richard Nelson, Supervisor
U.S. Fish & Wildlife Service
4469 48th Avenue Court
Rock Island, Illinois 61201

NO OBJECTION
U.S. Fish & Wildlife Service
Rock Island, Illinois
[Signature]
Supervisor Date

5/14/03

Attorneys at Law

311 South Wacker Drive
Suite 3000
Chicago, Illinois
60606-6677
Tel 312.360.6000

Brian Nettles
Paralegal
Direct 312.360.6336
Fax 312.360.6396
bnettl@
freebornpeters.com

*Chicago**Springfield*

Dear Mr. Nelson:

The Burlington Northern and Santa Fe Railway Company ("BNSF") plans to file an exemption to abandon its line of railroad between (Milepost 67.38) and (Milepost 1.45) in Des Moines, Iowa, a distance of 1.88 miles in the near future. There is an equation at Milepost 68.20 = Milepost 0.39.

Since Mr. Sims' letter of May 22, 2000, and your response thereto, a copy of which is enclosed for your reference, BNSF has decided to expand the abandonment to Milepost 1.45, originally ending at Milepost 0.40. Please advise whether the proposed expansion of abandonment will have any effect on any endangered or threatened species, wildlife sanctuaries or refuges or areas designated as critical habitat adjacent or near the line, and if so what effects the proposed expansion may have.

The proposed abandonment may require the removal of the track materials such as the rails and ties but the roadbed will be left intact.

Please provide this information as soon as possible. For your reference I have enclosed a map of the above referenced abandonment of railroad line. If you have any questions, or if you would like to discuss this matter further, please do not hesitate to contact me at (312) 360-6336.

Thank you in advance for your cooperation.

Sincerely,

Brian Nettles/DB

Brian Nettles

/bn

Enclosures

MAY 14 2003

E



STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
JEFFREY R. VONK, DIRECTOR

June 2, 2003

Mr. Brian Nettles
Freeborn & Peters
311 South Wacker Drive
Suite 3000
Chicago, IL 60606-6677

RE: Railroad line abandonment between milepost 67.38 and milepost 1.45 in Des Moines Iowa

Dear Mr. Nettles:

Thank you for inviting our comments on the impact of the above referenced project on protected species and rare natural communities.

We have searched our records of the project area and found no site-specific records of rare species or significant natural communities. However, our data are not the result of thorough field surveys. If listed species or rare communities are found during the planning or construction phases, additional studies and/or mitigation may be required.

This letter is a record of review for protected species, rare natural communities, state lands and waters in the project area, including review by personnel representing state parks, preserves, recreation areas, wetlands, fisheries and wildlife. It does not constitute a permit and before proceeding with the project, you may need to obtain permits from the DNR or other state and federal agencies.

Effective March 10, 2003, any construction activity that bares the soil of an area greater than or equal to 1 acre including clearing, grading or excavation may require a storm water discharge permit from the Department. For more information regarding this matter, please contact Ruth Rosdail at 515/281-6782.

If you have any questions about this letter or if you require further information, please contact Keith Dohrmann at (515) 281-8967.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin R. Szcodronski".

KEVIN R. SZCODRONSKI
ASSISTANT ADMINISTRATOR
CONSERVATION AND RECREATION DIVISION

KS:kd

CC: Christine Schwake, Water Quality Bureau, Iowa DNR (by email)

03-1893L

F



United States Department of the Interior

**Bureau of Land Management
Milwaukee Field Office
310 W. Wisconsin Ave., Suite 450
Milwaukee, Wisconsin 53203**



IN REPLY REFER TO:
2410 (030)

May 22, 2003

Mr. Brian Nettles
Freeborn and Peters, Attorneys at Law
311 South Wacker Drive
Chicago, Illinois 60606-6677

Dear Mr. Nettles:

We have reviewed the revised plans of the Burlington Northern and Santa Fe Railway Company (BNSF) for its abandonment of 1.88 miles of railway between Mile Post 67.38 and Mile Post 1.45, an expansion of the original BNSF plans by 1.05 miles. Our original recommendation, that the U.S. Army Corps of Engineers (COE) be notified, is not changed by the proposed plan revision.

You may contact the COE through Mr. Dick Mattson, Chief, Division of Realty, Rock Island District at (309) 794-5234, or write to:

U.S. Army Corps of Engineers
Division of Realty
Rock Island District
Clock Tower Building
P.O. Box 2004
Rock Island, Illinois 61204-2004

We thank you for notice of the proposed changes. If you have any questions or become aware of further changes, please feel free to contact me at (414) 297-4422 or at jeff_nolder@blm.gov.

Sincerely,

Jeff Nolder
Staff Geologist

G



THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

STATE OF IOWA

DEPARTMENT OF NATURAL RESOURCES
JEFFREY R. VONK, DIRECTOR

May 19, 2003

Brian Nettles
Freeborn and Peters
311 South Wacker Drive
Suite 3000
Chicago, IL 61616-6677

Re: BNSF Abandonment, Des Moines Iowa

Dear Mr. Nettles:

Your letter May 9, 2003 indicated the BNSF plans to expand the previously planned abandonment of the BNSF line in Des Moines to Milepost 1.45. You asked for comments regarding consistency with state water quality standards, Section 402 or 404 permits, etc.

Our comments are virtually the same as provided in our May 2001 letter. The additional line being abandoned will include a bridge crossing over the Raccoon River. Like the Des Moines, the Raccoon is meandered at this location and we request any abandonment proceedings regarding these structures be coordinated with the Department. Keith Dohrman (515-281-8967) now handles Sovereign Lands permits and he should be contacted if you have questions regarding the abandonment of the bridge structures.

Please feel free to contact me if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Riessen", written over a large, stylized circular flourish.

Jack Riessen, P.E.
Chief, Water Quality Bureau

c: Keith Dohrman



STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
JEFFREY R. VONK, DIRECTOR

May 31, 2001

Brian Nettles
Freeborn and Peters
311 South Wacker Drive
Suite 3000
Chicago, IL 61616-6677

Re: BNSF Abandonment, Des Moines, Iowa

Dear Mr. Nettles:

In your letter of May 17, you asked if the proposed abandonment of the BNSF rail between Mileposts 67.38 and 0.40 in Des Moines, Iowa will be consistent with federal, state or local water quality standards. I can only speak to the issue of state water quality standards. To my knowledge, there are no federal water quality standards as the federal Clean Water Act charges states with adopting water quality standards, albeit with federal oversight. Also, I am not aware of any local applicable water quality standards.

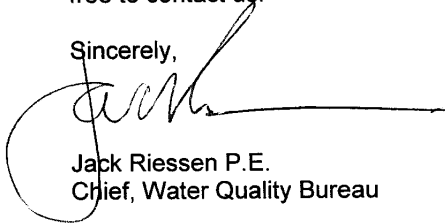
The abandonment, per se, will not violate state water quality standards. Actions that may be associated with the abandonment could potentially cause violations, but we would expect the potential to be minimal. Since you did not provide specifically what such actions may be, we cannot make a definitive statement to that effect, however.

The issue of whether a Section 404 permit will be needed should be addressed to the Rock Island District of the Corps of Engineers, as they carry out the Section 404 program in Iowa. A Section 402 water quality certification would only be needed if the Corps determined an individual Section 404 permit is needed.

One issue that is only indirectly related to water quality but is a concern of the Department is the disposition of the bridge over the Des Moines River. The Des Moines is "meandered" in this location, meaning the bed and the banks of the Des Moines in this reach are owned by the state. The question of ownership and resulting liability of abandoned railroad bridges over meandered waters has come into question at other locations, especially when debris jams occur or there is a matter of public safety with an aging structure. Any abandonment proceedings should clearly address this issue and be coordinated with the Department. If the bridge is to be dismantled, a Sovereign Lands Permit will be needed and Michelle Wilson (515-281-8675) should be contacted for additional information or an application.

Thank you for coordinating this project with us and if you should have any questions please feel free to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jack Riessen', with a long horizontal flourish extending to the right.

Jack Riessen P.E.
Chief, Water Quality Bureau

cc: Michelle Wilson, DNR Sovereign Lands

H



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
ROCK ISLAND DISTRICT, CORPS OF ENGINEERS
CLOCK TOWER BUILDING - P.O. BOX 2004
ROCK ISLAND, ILLINOIS 61204-2004

June 14, 2000

Operations Division

SUBJECT: CEMVR-OD-P-393020

Mr. John Sims
The Burlington Northern and
Santa Fe Railway
Post Office Box 961093
Fort Worth, Texas 76161-0039

Dear Mr. Sims:

Our office reviewed your letter and map dated May 22, 2000, concerning the proposed railway abandonment in Des Moines, including a portion over the Des Moines River in Section 10, Township 78 North, Range 24 West, Des Moines, Polk County, Iowa.

We determined your project as proposed does not require a Department of the Army (DA) Section 404 permit. Our office reviewed the information provided to us. No indication of discharge of dredged or fill material was found to occur in waters of the United States (including wetlands). Therefore, this determination resulted.

You are advised that this determination for your project is valid for five years from the date of this letter. If the project is not completed within this five-year period or your project plans change, you should contact our office for another determination.

Although a DA Section 404 permit is not required for the project as proposed, you must still acquire other applicable Federal, state, and local permits.

Should you have any questions, please contact our Regulatory Branch by letter, or telephone me at 309/794-5367.

Sincerely,

Michael D. Hayes
Project Manager
Enforcement Section

-2-

Copy Furnished:

Mr. Kelly Stone (2)
Iowa Department of Natural Resources
Flood Plain Section
Henry A. Wallace Building
900 East Grand Avenue
Des Moines, Iowa 50319-0034



ENGINEERING DEPARTMENT
CITY HALL
400 EAST FIRST STREET
DES MOINES, IOWA 50309-1801
(515) 283-4900
FAX (515) 283-4112

ALL AMERICA CITY 1949, 1976, 1981

April 4, 2002

Mr. Brian Nettles
Freeborn & Peters
311 South Wacker Drive
Chicago, IL 60606-6677

RE: The Burlington Northern Santa Fe
Railway Abandonment,
Des Moines, IA
Activity ID No. 18-2002-000

Mr. Nettles:

Please find attached a copy of a portion of the City of Des Moines FIRM that shows flood hazard zones in the vicinity of the referenced project. Also, attached is an aerial photo of the above referenced area. This area is protected by a levee system from the 100-year flood. Since no railway bridge exists today, the proposed abandonment will not affect the 100-year floodplain. The City of Des Moines supports this proposed abandonment.

If we can be of further assistance in this matter, contact Ross Stafford of my office at 515-283-4517.

Sincerely,

Jeb E. Brewer, P.E.
City Engineer

JEB/rs

Attachments

cc: Carl Elshire, Sewer Enterprise Administrator
Ross Stafford, Permit & Development
Terry Timmins, City Legal Department

J

STATE HISTORICAL SOCIETY OF IOWA

Where past meets future

May 3, 2002

**In reply refer to:
R&C#: 010577126**

Brian Nettles
Freeborn & Peters
311 South Wacker drive
Suite 3000
Chicago, Illinois 60606-6677

American Gothic House
Eldon

Blood Run NHL
Larchwood

Centennial Building
Iowa City

Matthew Edel Blacksmith Shop
Marshalltown

Abbie Gardner Cabin
Arnolds Park

Iowa Historical Building
Des Moines

Montauk Governor's Home
Union Sunday School
Clermont Museum
Clermont

Plum Grove Governor's Home
Iowa City

Toolesboro Indian Mounds
Toolesboro

Western Historic Trails Center
Council Bluffs

RE: STB – POLK COUNTY – BURLINGTON NORTHERN & SANTA FE RAILWAY
CO.. – NOTIFICATION OF PLAN TO FILE EXEMPTION TO ABANDON ITS
RAILROAD LINE FROM MILEPOST 67.38 AND .40 IN DES MOINES –
ADDITIONAL CORRESPONDENCE

Dear Mr. Nettles,

Thank you for notifying our office about the above referenced proposed project. We understand that this project will be a federal undertaking and will need to comply with Section 106 of the National Historic Preservation Act. According to our records, we have received and reviewed previously submitted correspondence from you concerning this proposed project. Unfortunately, it appears that there has been some confusion in our office regarding this project and it appears that you have received some correspondence from our office that incorrectly identified your project as a FDIC project in Scott County. I was provided your project information within the past 2 weeks. We sincerely apologize for this confusion.

We look forward to consulting with you and/or the Surface Transportation Board on the Area of Potential Effect for this proposed project and whether this project will affect any significant historic properties under 36 CFR Part 800.4. We will need the following types of information for our review:

- The Area of Potential Effect (APE) for this project needs to be adequately defined (36 CFR Part 800.16 (d)). The information that you have provided partly addresses this issue.
- Information on what types of cultural resources are or may be located in the APE (36 CFR Part 800.4). Particularly, we need additional information on what types of background information have been examined to identify what types of historic properties are in the Area of Potential Effect that might be affected by the proposed undertaking. Our office will need Iowa Site Inventory forms completed for every standing structure fifty years of age or older. No information was provided on whether any previously archaeological sites are located within the Area of Potential Effect that may be affected by the proposed undertaking.
- The significance of the historic properties in the APE in consideration of the National Register of Historic Places Criteria.
- A determination from the responsible federal agency of the undertaking's effects on historical properties within the APE (36 CFR Part 800.5).

The State Historic Preservation Office (SHPO) contains many sources of information concerning cultural resources within the state of Iowa. Included among these sources of information are

IOWA HISTORICAL BUILDING

600 East Locust • Des Moines, Iowa 50319-0290

Phone: (515) 281-6412 • Fax: (515) 242-6498 or (515) 282-0502

www.uiowa.edu/~shsi/index.htm

- Files with information on over 100,000 standing structures, objects, and historic districts in the Iowa Site Inventory which includes the National Register of Historic Places listings for Iowa;
- Historical and architectural surveys and thematic reports;
- Over 8,000 archaeological survey records and reports;
- Maps showing previously conducted archaeological survey locations;
- Copies of the Iowa Archaeological Site records from the Office of the State Archaeologist (OSA).

Information on cultural resources can also be found at local libraries, county engineer's office, universities and colleges, county historical societies and museums. The Office of the State Archaeologist (OSA) at the University of Iowa maintains the official Iowa Archaeological site records, and we encourage applicants, agencies, organizations and hired consultants to check with the Site Records Clerk at the OSA ((319) 384-0735) for update information on previously recorded archaeological sites.

The State Historic Preservation Office does not have staffing to conduct extensive background research for Section 106 projects or other historic preservation projects. We encourage agencies, applicants, organizations, or hired consultants to come to our office to conduct the background research on projects. SHPO staff members are available to assist people in learning about and utilizing our resources. There is no charge for using our records unless copies are requested.

We encourage you to begin conducting the background research on cultural resources which you will need to provide to us in accordance with 36 CFR Part 800.4. A preliminary review of some of our information indicates that one previously recorded archaeological site, 13PK61, may be affected by the proposed project activities. 13PK61 is a multicomponent archaeological site that includes a prehistoric Oneota component, the remains of Fort Des Moines II, and the remains of the early town of Des Moines and several other less well-defined prehistoric components. This site is considered eligible for listing on the National Register of Historic Places. It appears that your proposed project may have an effect on a National Register eligible historic property depending on what types of abandonment activities are being proposed. We will need specific information on any types of subsurface disturbance activities that are being proposed as part of the abandonment.

If your agency will be the primary contact for this project, the responsible federal agency which we presume is the Surface Transportation Board, needs to notify us that they have authorized you to consult with our office on this project in accordance with 36 CFR Part 800.2(c)(5). Also, the responsible federal agency will need to identify and contact all potential consulting parties that may have an interest in historic properties within the project APE (36 CFR 36 Part 800.2 (c)).

Please reference the Review and Compliance Number provided above in all future submitted correspondence to our office for this project. We look forward to further consulting with you and the Surface Transportation Board on this project.

We have made these **comments** and **recommendations** according to our responsibility defined by Federal law pertaining to the Section 106 process. The responsible federal agency does not have to follow our **comments** and **recommendations** to comply with the Section 106 process. It remains

the responsible federal agency's decision on whether or not to provide additional information to our office or whether or not to proceed with the project without the concurrence of this office. It also remains the responsible federal agency's decision on how you will proceed from this point for this project.

Should you have any questions please contact me at the number below.

Sincerely, 

Douglas W. Jones, Archaeologist
Community Programs Bureau
(515) 281-4358

cc: Lowell Soike, Deputy Iowa State Historic Preservation Officer
Ralph Christian, Historian, SHSI